

N.D.A.G. Letter to Kroke (May 19, 1989)

May 19, 1989

Mr. Jon F. Kroke
Steele County State's Attorney
P.O. Box 565
Finley, ND 58230

Dear Mr. Kroke:

Thank you for your May 10, 1989, letter inquiring whether a part-time state's attorney may hold office as a part-time municipal judge in another county.

N.D.C.C. § 11-16-05(2) provides as follows:

11-16-05. Restrictions on powers or state's attorney -- Option regarding full-time state's attorneys -- Penalty for breach of duty. The state's attorney shall not:

...

2. Be eligible to or hold any judicial office except that of United States commissioner.

This prohibition from holding judicial office applies whether the state's attorney performs his or her duties on a full or part-time basis.

I have enclosed with this letter an opinion and earlier letter addressing this subject.

A 1970 Attorney General's opinion concluded that the above-cited statute prohibited a state's attorney from holding office as a tribal judge. 1970-72 N.D. Op. Att'y Gen. 125. In a letter opinion of March 4, 1982, to Robert Keogh, Slope County State's Attorney, then Attorney General Robert Welfald concluded that a state's attorney, whether part-time or full-time, or appointed as a special assistant attorney general, could not hold the office of municipal judge "anywhere within the state of North Dakota." Because N.D.C.C. § 11-16-05(2) does not restrict this prohibition to specific judicial offices or the territorial jurisdiction of those offices, a state's attorney, whether performing duties on a full or part-time basis, is prohibited from assuming the office of municipal judge whether or not that office is located within the state's attorney's county.

I hope that I have adequately responded to your inquiry.

Sincerely,

Nicholas J. Spaeth
cv
Enclosure